

March 6, 2008

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In the Matter of)

Substance Abuse and Mental Health Services Administration)
Petition for Permanent Reassignment of Three Toll Free)
Suicide Prevention Hotline Numbers)

) **CC Docket No. 95-155**

Toll Free Service Access Codes)

) **CC Docket No. 07-271**
)
)

**REPLY COMMENTS OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES
ADMINISTRATION**

The U.S. Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), through its attorneys, hereby submits these reply comments in the above-referenced docket. These comments are submitted pursuant to the request¹ by the Federal Communications Commission (FCC or the “Commission”) for comments to refresh the record regarding the Order issued by the FCC’s Wireline Competition Bureau (the

¹ See CC Docket No. 95-155, DA 07-5002, Public Notice (WCB 2007), December 20, 2007

“WCB”) assigning three toll-free suicide prevention hotline numbers² to the US Department of Health and Human Services Substance Abuse Administration (SAMHSA).³ In November 2007, SAMHSA filed a petition seeking permanent reassignment of the toll-free suicide prevention hotlines.⁴ The Kristin Brooks Hope Center (“KBHC”) filed comments in response to SAMHSA’s petition for permanent reassignment,⁵ and at the conclusion of the new pleading cycle established by the FCC, KBHC filed additional comments.⁶ SAMHSA respectfully submits these reply comments in response to the arguments raised by KBHC.

² These toll-free numbers are used as suicide prevention hotlines (collectively, the “suicide prevention hotlines”): 1-800-SUICIDE (1-800-784-2433), 1-888-SUICIDE (1-888-784-2433), 1-877-SUICIDA (1-877-784-2432).

³ See, *Toll Free Service Access Codes*, CC Docket No. 95-155, Order DA 07-130, January 22, 2007, reassigning three toll-free numbers (1-800-784-2433, 1-888-784-2433, 1-877-2432) to SAMHSA for a period of one year. The original assignment extended until January 22, 2007. This period was extended by Order of the Wireline Competition Bureau for an additional 90 days (See *Toll Free Service Access Codes*, CC Docket No. 95-155, Order DA 07-5003, December 20, 2007).

⁴ See, U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers, *In the Matter of Toll Free Service Access Codes*, CC Docket 95-155, WCB Docket No. 07-271 (filed November 20, 2007).

⁵ See, Comments of the Kristin Brooks Hope Center, *In the Matter of U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers*, WCB Docket No. 07-271 (filed December 7, 2007).

⁶ See, *Reply Comments of the Kristin Brooks Hope Center*, CC Docket No. 07-271 (filed February 6, 2008).

I. KBHC'S FINANCIAL STATUS AND THE STABILITY OF THE TOLL-FREE SUICIDE PREVENTION HOTLINE NUMBERS

SAMHSA's earlier petitions⁷ address KBHC's pattern and history of financial insecurity and the threat that this pattern and history pose to the ongoing operation of the toll-free suicide prevention hotlines. KBHC's record of financial instability and debts to telecommunication providers resulted in tangible threats to disrupt and curtail service to the toll-free suicide prevention hotlines.

In fact, the initial request for reassignment filed by SAMHSA with the Commission in August 2006 was necessitated by KBHC's failure to pay a debt amounting to more than \$67,000.00 to Patriot Communications LLC (Patriot). As documented in our earlier filings, during the month of August 2006 and again during the period preceding the FCC Order issued in January 22, 2007,⁸ Patriot informed SAMHSA on several occasions that the hotlines were within hours of being shut down by the telecommunications provider, due to the unpaid bills owed by KBHC.⁹ It was this imminent risk to the health and safety of callers that prompted SAMHSA's actions to keep the lines functioning, and it was this peril to the suicide prevention hotline

⁷ See, Supplemental Petition of the U.S. Department of Health and Human Services in Support of its Request for Reassignment of Toll Free Suicide Prevention Numbers, *In the Matter of Toll Free Service Access Codes*, CC Docket 95-155, filed December 20, 2006, and see U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers, at footnote 4, *supra*.

⁸ See *In the Matter of Toll Free Service Access Codes*, CC Docket 95-155, Order, 22 FCC Rcd 651 (WCB 2007) (800-SUICIDE Order).

⁹ See Declaration of Eric Broderick, *In the Matter of Toll Free Service Access Codes*, CC Docket 95-155 (filed December 20, 2006)

numbers while operated by KBHC that led to SAMHSA's request to the FCC for assignment of the numbers.

In addition to the debt owed to Patriot,¹⁰ KBHC owed other debts to telecommunication providers, which debts are part of the public record.¹¹ Public filings by Patriot reveal KBHC's history of non-payment in detail. In fact, Patriot urged the Commission to review KBHC's record carefully: "The KBHC submissions are long on rhetoric and short on substance. The Commission should not allow KBHC to divert attention from the essential issue: KBHC has consistently failed to fulfill its contractual commitments to pay for the services needed to keep 1-800-SUICIDE and the related Toll-free Telephone Numbers at issue functioning."¹² Patriot and KBHC ultimately settled the lawsuit over non-payment of the telecommunications debt for terms that were not disclosed to the public, and KBHC withdrew its petition for sanctions against Patriot.¹³

¹⁰ The dispute between Patriot Communications and KBHC was documented in the earlier FCC filings, as well as in the lawsuit filed by Patriot Communications against KBHC in the Superior Court of California, County of Los Angeles, SC-091750. See, Opposition of Patriot Communications LLC to Kristin Brooks Hope Center's Petition for Cease and Desist Order and for Sanctions, CC Docket 95-155 (January 3, 2007)

¹¹ See, Notice of Ex Parte Communication, letter filed by AT&T, CC Docket 95-155 (filed December 29, 2006).

¹² See, Letter filed by Patriot Communications LLC, *In re KRISTIN BROOKS HOPE CENTER and 1-800-SUICIDE: Opposition of Patriot Communications LLC to Petition for Cease and Desist Order and For Sanctions Against Patriot Communications LLC and McLeodUSA Inc.*, CC Docket No. 95-155 (filed January 16, 2007).

¹³ See Notice of Withdrawal of Petition, filed by KBHC, *In the Matter of Kristin Brooks Hope Center and 1-800-SUICIDE, Petition for Cease and Desist Order and for Sanctions Against Patriot Communications LC and McLeod USA Incorporated*, CC Docket No. 95-155, (filed February 27, 2007)

Despite KBHC's claim in its Reply Comments,¹⁴ SAMHSA never agreed to pay the telephone service provider on behalf of KBHC. As stated in previous filings,¹⁵ in August 2006 SAMHSA was asked to assume financial and operational control of the suicide prevention hotline 1-800-SUICIDE. SAMHSA agreed to do so, and KBHC agreed to transfer the number to SAMHSA, consistent with FCC rules.

While KBHC's recent filings assert that its financial insecurity has changed, there is no verifiable evidence submitted to date to support this claim. KBHC states that it continues to operate and pay for telecommunications services for eleven other toll-free numbers, asking the Commission to infer from this a demonstrable ability to manage the suicide prevention hotline numbers. KBHC provides no explanation as to the scope, call volume, or services offered for these other lines. Moreover, KBHC offers no explanation or facts regarding the additional financial resources currently available to them that would permit sustained, stable operation of the suicide prevention hotlines.

As previously described in SAMHSA filings, the number of calls answered by the three toll-free suicide prevention hotlines is more than 20,000 calls monthly.¹⁶ SAMHSA has noted previously that each call represents a potential caller at risk. SAMHSA began operating the hotlines so as not to risk the health and well-being of callers, and filed its request for Permanent

¹⁴ See, *Reply Comments of the Kristin Brooks Hope Center*, CC Docket No. 07-271 (filed February 6, 2008) at 4.

¹⁵ See Declaration of Eric Broderick, *In the Matter of Toll Free Service Access Codes*, CC Docket 95-155 (filed December 20, 2006).

¹⁶ The calculation of call volume differs depending on whether tallying (1) calls dialed to the hotline numbers, or (2) calls answered by crisis centers. On average, SAMHSA estimates that 67% of callers to the suicide prevention hotlines stay on the line until their call is answered.

Reassignment in support of this goal.

The toll-free suicide prevention hotlines that have been reassigned to SAMHSA are a unique resource demanding high-quality and constantly available services for all callers. Maintaining services to these hotlines for thousands of callers is demanding from a financial, technical, and professional perspective. KBHC has not demonstrated that their ability to offer other hotline services equates with the professional and technical proficiency and financial resources needed to operate these suicide prevention hotlines numbers.

II. KBHC's APPLICATION FOR REVIEW

SAMHSA filed an Opposition to KBHC's Application for Review on March 9, 2007, and renews its opposition to KBHC's Application for Review at this time. In addition, SAMHSA notes that KBHC has raised some new contentions that merit response.

SAMHSA addressed the need for urgent action due to the potential risk to each and every one of the thousands of callers per month if service to the hotlines was imperiled in the requests filed with the Commission.¹⁷ The FCC agreed with SAMHSA, holding in its order issued on January 22, 2007 that it was not necessary to wait until the lines actually cut off to determine that

¹⁷ See Letter from Secretary Michael Leavitt of the U.S. Department of Health and Human Services Michael Leavitt to Kevin J. Martin, Chairman, FCC, CC Docket 95-155, filed August 25, 2006, and see Letter from Eric B. Broderick, D.D.S., M.P.H., Acting Deputy Administrator of the Substance Abuse and Mental Health Services Administration, Assistant Surgeon General, to Kevin J. Martin, Chairman, FCC CC Docket No. 95-155 (filed Dec. 12, 2006), and Supplemental Petition of the U.S. Department of Health and Human Services in Support of its Request for Reassignment of Toll Free Suicide Prevention Numbers, at footnote 7, supra..

emergency conditions existed.¹⁸

Further, KBHC mistakenly characterizes the 1-800-SUICIDE number as its private property and therefore alleges that the reassignment of the toll-free suicide prevention hotlines to SAMHSA is a “taking” of its private property that necessitates compliance with constitutional requirements of Due Process. However, the case cited by KBHC¹⁹ is not relevant to this matter because the courts²⁰ and the FCC²¹ have found that telephone numbers are a public resource, and no one has a property interest in a telephone number. As a result, this matter is appropriately viewed within the discretionary authority of the WCB, as described in previous FCC orders.

Finally, KBHC asserts without proof that KBHC’s services are “superior” to those of SAMHSA. In fact, SAMHSA has made numerous significant improvements to the hotline services since the FCC issued the order reassigning the hotlines to SAMHSA on January 22, 2007.

Since KBHC last managed the telephonic infrastructure and crisis center network, SAMHSA has (1) increased the network’s surge capacity so that sudden increases in call volume are responded to by the crisis centers rather than overloading the system; (2) implemented a more

¹⁸ See *800-SUICIDE Order* at 4.

¹⁹ See *Reply Comments of the Kristin Brooks Hope Center* (filed February 6, 2008) at 8, citing *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985).

²⁰ See, e.g. *Jahn v. 1-800-FLOWERS.com, Inc.* 284 F. 3d 807 (7th Cir. (Wis.) March 29, 2002) rehearing and rehearing en ban denied (April 23, 2002); *StarNet, Inc.* 355 F. 3d 634, 637 (7th Cir. 2004).

²¹ *Toll Free Service Access Codes*, CC Docket No. 95-155, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9061, n. 14 (1998) (*Toll Free Fourth Report and Order*); see also *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Red 2588, 2591, para. 4 (1995). See also federal regulations at 47 CFR §52.107(a). This principle was reaffirmed by the FCC in their Order of January 22, 2007, see WCB Order at 4.

efficient caller ID system so that crisis centers can initiate emergency rescues for callers at imminent risk of harming themselves; and (3) provided networked crisis centers stipends to help offset the resources they expend by answering calls to the National Suicide Prevention Lifeline²² (Lifeline) toll-free numbers.

KBHC also makes the groundless assertion that it offers “better privacy safeguards.” Neither SAMHSA nor its grantee that manages the National Suicide Prevention Lifeline collect or request personal information identifying callers. While SAMHSA estimates that many of the 125 crisis centers currently networked into the system collect some basic information from callers (e.g., gender, approximate age, nature of the problem), personal information is never requested by or shared with the federal government.

SAMHSA reiterates and emphasizes that the Lifeline network, which includes the suicide prevention hotline numbers, is operated as part of the grant program “Networking, Certifying, and Training Suicide Prevention Hotlines.” This program is funded by SAMHSA as part of its public health mission and consistent with its statutory authority under the Public Health Service Act.²³ The grant (cooperative agreement²⁴) to administer the program for Networking, Certifying, and Training Suicide Prevention Hotlines was awarded following an open

²² The National Suicide Prevention Lifeline was established by SAMHSA and is operated by a grantee according to the terms of cooperative agreement SM 07-009.

²³ See 42 U.S.C. §290bb-32

²⁴ As described in previous SAMHSA filings, cooperative agreements are arrangements under which assistance is given by the federal government with the expectation of a degree of active intervention by the federal government in the conduct of the substantive program. See the Federal Grant and Cooperative Agreement Act of 1977, Pub.L. No. 95-224, 92 Stat. 3, recodified, Pub.L. No. 97-258, 96 Stat. 1003 (September 13, 1982), as described in *Essentials of Grant Law Practice*, P. Dembling and M. Mason, 1991. See also 31 U.S.C. §6301 et seq.

competition, the terms of which are available to the public and disseminated in multiple public sources including the SAMHSA web site.²⁵ According to the Notice of Funding Availability for this grant program, the grantee is responsible for managing the network to maintain service to the network. These tasks include providing training and technical assistance to local crisis centers that operate independently, as well as enhancing the capacity of networked crisis centers to follow up with callers and to strengthen linkages within their local mental health systems.²⁶

III. FOIA REQUEST

KBHC argues that the Commission and SAMHSA should first respond to KBHC's request for information under the Freedom of Information Act (FOIA) before the Commission takes any further action in this matter.

Requests for public information are handled according to procedures established by law and regulation.²⁷ There is no procedural or substantive requirement in these laws or regulations that the Commission postpone ruling on SAMHSA's request for permanent reassignment of the numbers, pending a response to a request for public information. To postpone a decision while a FOIA request is open will only contribute to needless delays of FCC decision-making.

SAMHSA is processing the FOIA request in the normal course of operations. However, the KBHC request is not relevant to the FCC determination regarding permanent reassignment of

²⁵ See the following URL: www.SAMHSA.gov

²⁶ See SAMHSA Request for Applications, SM 07-009, "Cooperative Agreement for Networking, Certifying, and Training Suicide Prevention Hotlines," at: http://www.samhsa.gov/Grants/2007/sm_07_009.aspx

²⁷ 5 U.S.C. §552, 47 C.F.R. §0.441 et. seq., and 45 C.F.R. part 5.

the suicide prevention hotline numbers and FCC action should not be delayed because of requests by one party or another for information under the Freedom of Information Act.

IV. BENEFIT TO THE PUBLIC

Finally, KBHC argues that there would be no harm to SAMHSA or to the public if the toll-free suicide prevention hotlines were reassigned to KBHC. Indeed, there would be no harm to SAMHSA. However, SAMHSA has never argued that the permanent or temporary assignment of numbers stood to benefit SAMHSA in any way. Nevertheless, KBHC makes the erroneous contention that SAMHSA has not invested in the toll-free hotline numbers.

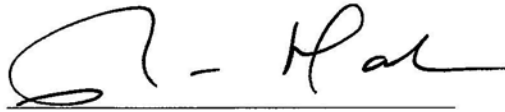
Since 2001, SAMHSA has invested more than \$15 million in grants for networking, certification, and training of the crisis centers that respond to all calls for 1-800-273-TALK and 1-800-SUICIDE. SAMHSA has committed another \$14.4 million to suicide prevention hotline network through 2011. Additionally, SAMHSA invested \$1.3 million in evaluating these services. SAMHSA's investments were and continue to be responsible for the growth and development of the telephonic infrastructure (streamlined and greatly enhanced since January 2007) and the network of crisis centers that answer the national suicide prevention network calls. In the current fiscal year, the National Suicide Prevention Lifeline will provide more than \$700,000 in direct financial support to those crisis centers. Also in the current fiscal year, 36 of the centers will take advantage of a SAMHSA-supported 5-day intensive suicide prevention training to enhance service quality, at an estimated cost of \$15,000 per center in the private market.

Moreover, as noted previously, SAMHSA has taken numerous steps to enhance services to callers. SAMHSA added options to serve veterans in need of crisis counseling, added risk assessment services, and developed drafts emergency intervention guidance. Since the January 22, 2007 FCC order, SAMHSA has also taken the following steps to enhance service: (1) Added an option for veterans and their families that links callers to a Department of Veterans Affairs call center in Canandaigua, NY. All Lifeline callers hear the prompt directing them to “press 1” if they are a U.S. military veteran or if they are calling about a veteran. A total of 21,030 callers chose the veterans option during the 5 months that the VA hotline operated in 2007 (daily average call volume: 133). Of those callers, 44.2% used 1-800-SUICIDE. If 1-800-SUICIDE is returned to KBHC, those callers would no longer have the option of linking to the VA hotline; (2) Based on gaps identified by evaluators when the system was managed by KBHC, SAMHSA successfully developed and implemented Suicide Risk Assessment Standards to ensure proper identification and risk assessment of suicidal callers. 100 percent of the crisis centers are implementing the standards; and (3) Developed draft emergency intervention guidance for crisis centers.

VII. CONCLUSION

For all the foregoing reasons, and the reasons articulated in SAMHSA’s Petition for Permanent Reassignment of Three Toll Free Hotline Numbers, and in SAMHSA’s Opposition to KBHC’s Application for Review, SAMHSA respectfully requests that the Commission permanently reassign the suicide prevention hotlines to SAMHSA at this time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Hakimian', is written over a horizontal line.

Rina Hakimian
Constance L. Foster
Petitioner's Representatives
Office of the General Counsel
Public Health Division
Department of Health and Human Services
5600 Fishers Lane, Room 4A-53
Rockville, MD 20857
(301) 443-2644 (phone)
(301) 443-2639 (Fax)

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To: The Commission

DECLARATION OF ERIC BRODERICK

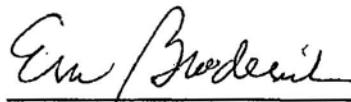
1. My name is Eric Broderick and I am currently the Deputy Administrator for the Substance Abuse and Mental Health Services Administration (SAMHSA), of the U.S. Department of Health and Human Services. As the Deputy Administrator, I am the chief operating officer for SAMHSA and share with the Administrator responsibility for management of SAMHSA's activities in support of its mission to improve the lives of people with or at risk for mental illness. As part of these duties, I oversee internal and external policy development for SAMHSA, and am responsible for communication of these policies.

2. I make this Declaration based on personal knowledge, unless otherwise indicated.

3. I have read the attached Reply Comments of the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration, submitted to the Federal Communications Commission in the above-referenced docket, and can attest to the accuracy of the facts stated therein.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information and belief.

March 6, 2008

A handwritten signature in cursive script, reading "Eric Broderick", written over a horizontal line.

Eric Broderick